

REMARKS

A. Status of the Claims

Claims 1-7 and 9-24 are pending. Claims 1-6 have been canceled without prejudice or disclaimer. Applicants reserve the right to pursue the canceled subject matter in a divisional application. Claims 7 and 9 have been amended with out prejudice or disclaimer to further define the subject matter of the invention. Specifically, Claim 7 has been rewritten in independent format. Claim 9 has been amended to now depend upon Claim 7 rather than newly canceled Claim 1.

Support for the amendments is found in the originally filed Claims and specification. Accordingly, no new matter has been introduced through these amendments.

B. Objection of Claim 7

Claim 7 has been objected to by the Office as being dependent upon a rejected base claim. Applicants acknowledge and thank the Examiner for her indication that Claim 7 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicants have rewritten Claim 7 in independent format. Applicants would like to point out that Applicants have not amended claim 7 with respect to the elected species. Applicants reserve the right to amend until the determination of allowable subject matter. In the event that the Office subsequently finds the elected species allowable, Applicants respectfully request that the prior art search be extended to the extent necessary to determine patentability of the Markush-type claim as is required by MPEP §803.02.

C. Rejection of Claims 1-6 and 9 Under 35 U.S.C. § 112, second paragraph

Claims 1-6 and 9 are rejected by the Office under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

Applicants respectfully submit that the Office's grounds for rejection has been rendered moot in view of the cancellation of Claims 1-6 and the amendment changing the dependency of

Claim 9 to Claim 7. Accordingly, Applicants respectfully request the withdrawal of this rejection of Claims 1-6 and 9 under 35 U.S.C. § 112, second paragraph.

D. Rejection of Claims 1 and 9 Under 35 U.S.C. § 102 (a)

Claims 1 and 9 are rejected by the Office under 35 U.S.C. § 102(a) as being anticipated by WO 99/31061 (“*Askew*”). The Office points to Compound 26-6 of *Askew* as allegedly reading on the Claims.

Applicants respectfully submit that the rejection of Claims 1 and 9 has been rendered moot in view of the cancellation of Claim 1 and the amendment of Claim 9 to depend upon Claim 7. *Askew* does not teach or disclose any of the compounds recited in Claim 7. Claim 9 recites, *inter alia*, a pharmaceutical composition comprising a compound according to Claim 7. Therefore, *Askew* does not teach every element of Claim 7. *Askew* does not anticipate either Claims 7 or 9. Accordingly, Applicants respectfully request that the rejection of Claims 1 and 9 under 35 U.S.C. § 102(a) be withdrawn.

E. Rejection of Claims 1 and 9 Under 35 U.S.C. § 102 (e)

Claims 1 and 9 are rejected by the Office under 35 U.S.C. § 102(e) as being anticipated by US 6,048,861 (“*Askew*”) and US6,297,249 (“*Duggan*”). The Office points to Compound 26-6 of *Askew* and *Duggan* as allegedly reading on Claims 1 and 9.

Applicants respectfully submit that the rejection of Claims 1 and 9 has been rendered moot in view of the cancellation of Claim 1 and the amendment of Claim 9 to depend upon Claim 7. Neither *Askew* nor *Duggan* teach or disclose the compounds recited in Claim 7. Claim 9 recites, *inter alia*, a pharmaceutical composition comprising a compound according to Claim 7. Therefore, *Askew* and/or *Duggan* do not teach every element of Claim 7 and these two references, either alone or in combination, do not anticipate either Claims 7 or 9. Accordingly, Applicants respectfully request that the rejection of Claims 1 and 9 under 35 U.S.C. § 102(e) be withdrawn.

F. Rejection of Claims 1-6 and 9 Under 35 U.S.C. § 103 (a)

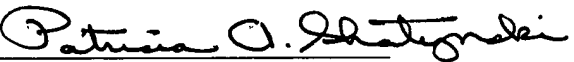
Claims 1-6 and 9 are rejected by the Office under 35 U.S.C. § 102(e) as being anticipated by WO 99/31061 ("*Askew*").

Applicants respectfully submit that the rejection of Claims 1-6 and 9 has been rendered moot in view of the cancellation of Claim 1 and the amendment of Claim 9 to depend upon Claim 7. The Office previously stated that Claim 7 contained allowable subject matter if redrafted in independent format. See Office Action, pg. 8. Accordingly, Applicants respectfully request that the rejection of Claims 1-6 and 9 under 35 U.S.C. § 103(a) be withdrawn.

In view of the above remarks, Applicants respectfully request that the restriction requirement be reconsidered and withdrawn or modified appropriately in view of the presently claimed invention.

If a telephonic communication with the Applicants' representative will advance the prosecution of the instant application, please telephone the representative indicated below. Applicants believe no additional fees are due but the Commissioner is authorized to charge any fees required in connection with this response to Merck Deposit Account No. 13-2755.

Respectfully submitted,

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Date: April 12, 2006